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SUPREME COURT, U.S.**

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

Case No. A-547
83-6297

JUNE UNDERWOOD (LAMPRIN)

Appellant-Petitioner

VS.

STATE OF OHIO, et al.

Appellees-Respondents

On Appeal from The Supreme Court of Ohio

APPELLANT-PETITIONER'S BRIEF
IN OPPOSITION TO APPELLEE'
MOTION TO DISMISS OR AFFIRM

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RESPONSE TO APPELLES' STATEMENT OF THE CASE

Appellees fail to mention the time sequence in regard to the actions of the lower courts which are extremely important as to Appellant-Petitioner's claim that she has been deprived due process of law.

The Appellees also fail to state that there were strong causes of action in regard to violation of constitutional and civil rights presented in the original complaint and which were ordered stricken from the complaint by a judge of the Ohio Court of Claims on the basis that civil and constitutional rights could not be raised in the Ohio Court of Claims. (Judgment Entry of October 22, 1975, with it accompanying opinion.)

Though the trial was concluded in July of 1978, an opinion and order dismissing the Appellant-Petitioner's complaint was not issued until over a year and a half later. (February 26, 1980) Post-trial motions were filed, and in particular, directed to seeking a new trial. The trial judge sat on these motions, and ex parte and without any notice to counsel for either side, on February 18, 1981, requested permission from the Ohio Supreme Court to withdraw as trial judge and he was replaced, again without any notice to counsel for either side, by the Ohio Supreme Court. It must be pointed out that the judges for the Ohio Court of Claims are appointed by the Chief Judge of the Supreme Court of Ohio to sit on individual cases. (Section 2743.03, Ohio Revised Code)

It was not until May 6, 1981, by a Court of Claims document entitled "Findings, Conclusions, Order: Directing Transcriptions of Audio Tapes for Court Use; Overruling Plaintiff's Request for Free Transcript, Authorizing Sale of Copy of Transcript Prepared for Court" was counsel for Appellant-Petitioner informed that the trial judge had withdrawn from this matter approximately three months earlier. It is one of Appellant-Petitioner's claims in regard to jurisdiction of this Court that the change of judges, ex parte and without notice

or explanation to counsel as to the reason the trial judge withdrew from the case at this late date and while post-trial motions were pending, was a violation of her constitutional rights to due process of law and an impartial judiciary. (Amendment V, Amendment XIV, United States Constitution; Ohio Const. Art. I, Section 10, 16 and which rights can be civilly enforced under 42 U.S.C. Section 1983.)

This "Order" of the Court of Claims of May 6, 1981, was signed by a totally different judge than the trial judge or his replacement. Over 16 months passed before the replacement judge (Judge Rice) issued his opinion on the post-trial motions. Even though requested by Appellant-Petitioner's counsel, no oral argument was ever scheduled nor took place from February 26, 1980 through the time that the Order of September 10, 1982 was issued.

Appellant-Petitioner's counsel have never seen nor orally communicated with Judge Rice. His finding demonstrates that he did not review the totality of this case and the enormous transcript and authorities of law presented in this matter, but merely summarized the procedural posture that the case was in. A rubber stamp of questionable judicial conduct which is cloaked in silence should not be considered constitutionally tolerable in our democracy.

Appellant-Petitioner takes strong exception to Appellees' statement on page one of the Motion to Dismiss or Affirm that "(T)he Court of Appeals determined that there was sufficient evidence to support the findings of the trial court." A major contention of the Appellant-Petitioner is that a total review of the trial transcript will show that there was not sufficient nor adequate evidence to support the findings of the trial court. It is apparent by the decisions which have been rendered in this case that the courts have been unwilling to spend the time to read the transcripts, because if they had done so, the outrageous wrongs which have been done to the Appellant-Petitioner could not, under the laws of the State of Ohio and the United States, be judicially affirmed.

A review of the proceedings will show that at every step throughout the state court system, beginning with the initial complaint filed in the Ohio Court of Claims, Appellant-Petitioner has raised the constitutional and civil rights issues.

APPELLANT-PETITIONER'S RESPONSE TO APPELLEES'
STATEMENT OF FACTS

Statements contained within the Appellees' Statement of Facts are not supported by the evidence contained within the trial record.

Appellant had been living with her mother since she was approximately two years of age. Her mother had remarried, and repeatedly, her step-father, Arthur Underwood, sexually abused this child. By 1965, she had run away from home on numerous occasions in attempts to get away from her step-father. The records of the Hamilton County Welfare Department clearly demonstrate that there were substantial problems within this home environment and that this child had requested placement in a foster home. She was told by social workers employed by the Hamilton County Welfare Department (who were also employed by the State of Ohio) that if she ran away one more time she would be placed in a foster home. In an attempt to be placed in a foster home and to get out of her own home environment, she ran away. A worker from the Hamilton County Welfare Department (who was also employed by the State of Ohio) along with the step-father, who wrongfully and illegally probated this child to a state mental institution. In total violation of state laws, particularly when the superintendent-psychiatrist of the institution indicated that after the original 90-day order, there was no legal basis upon which she was detained at this state mental hospital, this child, totally unrepresented by legal counsel, was forced to spend the next seven years of her life confined at a state mental hospital in deplorable and inhumane conditions.

On page 3 and 4 the Appellees acknowledge that June did see some of her family from November 24, 1965 through October 8, 1966. However, she was not released from this hospital nor had any contact with any of her family members because of wrongful and illegal actions by Ohio State employees with her family for the next six years of her imprisonment.

The Appellees admit that there was never a finding that

this child was psychotic nor in need of institutionalization which would comply with the requirements for such institutionalization and confinement under the laws of the State of Ohio and the Constitution of the United States. (Section 5122.01(A)(B), Ohio Revised Code; Sheffel v. Sulikowski, (1980) 62 Ohio St 2d 128, 403 NE2d 993, Fifth and Fourteenth Amendments of the United States Constitution; O'Connor v. Donaldson, (1975) 95 S Ct 486)

The rest of Appellees' statements contained within their Statement of Facts are so totally without merit, nor can they be supported by the trial transcript, that Appellant-Petitioner will not address these facts at this time, but will instead stand upon the record as it exists.

June Anderson, an employee of the State of Ohio, in an admission against interest (Plaintiff's Exhibit 47) quite candidly summed up this case when she wrote in a business correspondence within the course and scope of her employment:

"it seems that June's long hospitalization in retrospect, was unnecessary from the beginning and, all in all, a tragic mistake. . .

From the above history, it should be apparent that June has never been mentally ill. She was apparently 'lost on the wards' at Longview. . ."

I. Appellant-Petitioner's Claims were adequately presented in the state courts.

Appellees' position that the Federal Constitutional and civil rights questions are being raised for the first time and were not properly presented in the state courts is absolutely false. A review of the initial complaint shows at paragraph 6, 7, 10, 14, 17 and 18, raises the constitutional and civil rights causes of action. By order of the Ohio Court of Claims, these causes of action were stricken from the complaint. (October 22, 1975) At every step of the appeal process Appellant-Petitioner raised these issues and questioned the action of the trial court in striking the constitutional and civil rights claims. Even the Appellees, at page 12 of their Motion to Dismiss or Affirm,

acknowledge that within the Assignments of Error filed within the Court of Appeals, that Appellant-Petitioner was contending that prejudicial error had been committed when the Court of Claims struck the 42 U.S.C. Section 1983 claims from the original complaint. It is further acknowledged at this page that Appellant-Petitioner raised constitutional and civil rights errors in regard to the irregularities surrounding the ex parte withdrawal of the trial court judge while post-trial motions were still pending.

A review of the numerous legal memoranda filed on behalf of the Appellant-Petitioner in this matter will clearly show that constitutional and civil rights issues were constantly being addressed and were constantly ignored in the judicial determinations in this matter. (A copy of the Complaint, the Table of Contents from Appellant's Brief and Assignments of Error filed in the Court of Appeals, Franklin County, Ohio, and a copy of the Table of Contents for the Memorandum in Support of Jurisdiction filed in the Supreme Court of Ohio are attached hereto in order to demonstrate that constitutional and civil rights claims have been raised and addressed by Appellant-Petitioner throughout this litigation.)

II. There is no limited waiver of sovereign immunity in existence in the State of Ohio in the Court of Claims which permits the exclusion of constitutional and civil rights jurisdiction from the Ohio Court of Claims.

There is nothing within the Ohio enabling statute which gave birth to the Ohio Court of Claims (Section 2743.01 et seq., Ohio Revised Code) which denies the rights of individuals to raise constitutional and civil rights claims in the Ohio Court of Claims. In fact, this limitation has been created by judicial fiat and not by legislative intent nor statute.

The case now before this Court is not a question of whether state governmental immunity is reviewable by this Court. Instead, the issue presented is whether the judiciary can, on its

own, limit the right to redress and recovery in violation of state statutes. Once the state, by its legislature, has consented to be sued without limitation, it is improper for the judiciary, on its own and arbitrarily, place a limitation on that right.

" . . . The General Assembly created the Court of Claims as the form for deciding suits against the state by enacting R. C. 2743.03 (A). 'There is hereby created a court of claims. The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code. . .'" (Emphasis Added.)
Boggs v. State, (1983) 8 Ohio St 3d 15.

Further, as stated in the additional authorities filed on behalf of Appellant-Petitioner, the Supreme Court of Ohio, as recently as February 22, 1984, has further eliminated sovereign immunity from various government entities within the State of Ohio.

Merrek v. Cleveland Metro Parks, (1984) 9 Ohio St 3d 194; Mathis v. Cleveland Public Library, (1984) 9 Ohio St 3d 199; Zents v. Bd. of Commrs., (1984) 9 Ohio St 3d 201; O'Brien v. Egelhoff, (1984) 9 Ohio St 3d 209.

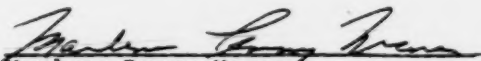
Further, the Ohio Supreme Court has determined that
". . . the Court of Claims Act merely places a state upon the same footing as private parties. . ." Reese v. Ohio State Univ. Hosp., (1983) 6 Ohio St 3d 162, at 164.

CONCLUSION

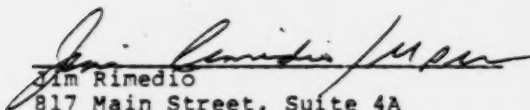
The decisions and actions of the state courts in this case are in direct violation and contradiction to this Court's decision in In re Gault, (1967) 387 US 1, 87 S Ct 1428, 18 L Ed 2d 257; Goss v. Lopez, (1975) 95 S Ct 729; Wood v. Strickland, (1975) 95 S Ct 1992; O'Connor v. Donaldson, supra; Brown v. Board of Education, (1954) 347 US 483, 74 S Ct 686, 98 L Ed 873; Humphrey v. Cady, (1972) 405 US 504, 92 S Ct 1048; Scheuer v. Rhodes, (1974) 416 US 232; Vitek, et al. v. Jones, (1980) 445 US 480, 100 S Ct 1254, 63 L Ed 2d 552; Goldberg v. Kelly (1970) 397 US 254, 90 S Ct 1101; and Ex Parte Young, (1908) 28 S Ct 441.

It is for the reasons and supporting authorities which have been set forth in Appellant-Petitioner's Jurisdictional Statement and/or Petition for a Writ of Certiorari, the Additional Authorities submitted in support thereof, and this Brief in Opposition to Appellees' Motion to Dismiss or Affirm that Appellant-Petitioner requests this court to deny said motion and to grant jurisdiction and/or Writ of Certiorari.

Respectfully submitted,



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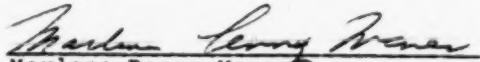


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to opposing counsel, Stephen P. Samuels, Assistant Attorney General, Office of the Attorney General, State Office Tower, 17th Floor, 30 E. Broad Street, Columbus, Ohio 43215 by ordinary U. S. Mail, postage prepaid on this 5th day of April, 1984.


Marlene Penny Maner
Member of the Supreme Court Bar

APPENDIX

IN THE COURT OF CLAIMS

STATE OF OHIO

JUNE UNDERWOOD
3131 Gilbert Avenue
Cincinnati, Ohio 45206

Plaintiff

CASE NO. 75-0270

-vs-

STATE OF OHIO
through the Attorney General
William J. Brown, Attorney General
State Office Tower - 17th Floor
30 E. Broad Street
Columbus, Ohio 43215

OHIO DEPARTMENT OF MENTAL HYGIENE AND CORRECTIONS
Dr. Timothy Moritz, Director
2929 Kenny Road
Columbus, Ohio 43215

LONGVIEW STATE HOSPITAL
6600 Paddock Road
Cincinnati, Ohio 45216

OHIO DEPARTMENT OF EDUCATION
Martin W. Essex, Director
65 Front Street
Columbus, Ohio 43215

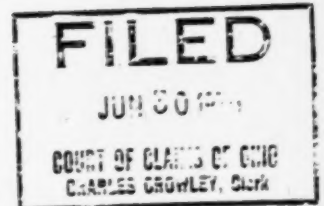
HAMILTON COUNTY WELFARE DEPARTMENT
628 Sycamore Street
Cincinnati, Ohio 45202

GOVERNOR JAMES RHODES
State of Ohio
State Capitol
High & Broad Streets
Columbus, Ohio 43215

OHIO DEPARTMENT OF PUBLIC WELFARE
Denver White, Director
30 E. Broad Street
Columbus, Ohio 43215

Defendants

COMPLAINT



1. The Plaintiff, June Underwood, states that since the time of her birth until her 18th birthday, she has been a ward of the State of Ohio, and the defendants are agents of the State.

2. The Plaintiff further states that she is currently receiving financial assistance from the Hamilton County Welfare Department.

3. Plaintiff states that she was born as a ward of the State in University Hospital, Columbus, Ohio, and was, within a few days of birth, placed in a foster home by and under the auspices of the State of Ohio.

Plaintiff was placed in one foster home after another from 1956 until approximately 1959.

5. Plaintiff, through questionable probate procedure, was probated to and admitted to Longview State Hospital, a Defendant in this case, on July 21, 1965.

6. While at Longview State Hospital, the Plaintiff was denied by the Defendants, individually and/or conspiratorially, of her basic constitutional and civil rights of freedom to travel, right to an education, right to treatment, and was deprived of all her rights guaranteed by the Fourteenth Amendment of the United States Constitution and guaranteed under 42 USC 1983, and federal and state laws, all to her detriment.

7. The Defendants, individually and/or conspiratorially, negligently engaged in conduct which resulted in wrongful detention and false imprisonment of the Plaintiff.

8. The Defendants, individually and/or conspiratorially, negligently failed to properly diagnose and/or properly treat the Plaintiff.

9. The Defendants, individually and/or conspiratorially, negligently failed to place the Plaintiff in a proper environment and instead placed Plaintiff in such an environment that was detrimental to her physical, mental, and emotional wellbeing.

10. During the period of confinement at Longview State Hospital, when the Defendants knew or should have known of this improper and wrongful detention, placement and lack of educational, as well as living facilities, failed to correct the situation and continued to engage in wrongful and negligent behavior which continued the further deprivation and denial of constitutional and civil rights of the Plaintiff.

11. Defendants, individually and/or conspiratorially, used drugs on the Plaintiff not approved by the Federal Drugs Administration and with little regard for the rights of the Plaintiff while the Plaintiff was confined to Longview State Hospital.

12. Plaintiff further states that the majority of time she spent at Longview State Hospital, she was confined to adult wards even though the Plaintiff was a young minor.

13. Plaintiff further states that there has not been a finding of "dangerously mentally ill to herself or to others" which would have justified any type of involuntary confinement.

14. The Plaintiff states that during her confinement at Longview State Hospital, she received only approximately one year of education and due to this deprivation of the right to an education, is still unable to adequately read and write and has not acquired the basic educational skills.

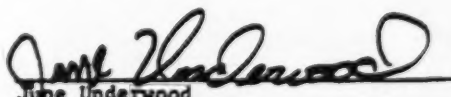
15. After Plaintiff's discharge from Longview State Hospital, the Defendant, Hamilton County Welfare Department, assumed jurisdiction over said Plaintiff and continued to engage in wrongful and inadequate care, treatment, and placement of the Plaintiff.

16. Plaintiff further states that as a result of being in Longview State Hospital for approximately 8 years, that she now has a stigma of being institutionalized in a mental institution and is unable to secure employment due to the stigma and is suffering other discrimination because of the stigma

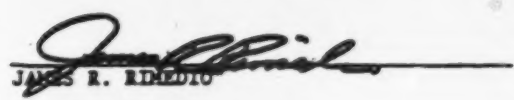
17. Plaintiff states that she is not, nor has she been, dangerously mentally ill and that the denial of her constitutional and civil rights have been unjustifiably taken away by the Defendants, individually and/or conspiratorially.

18. The negligence and/or wilful and/or wanton and/or arbitrary behavior of the Defendants, with no justifiable basis, acting individually and/or conspiratorially, and/or with total disregard for the constitutional, statutory, and civil rights of the Plaintiff, has resulted in severe personal injuries, detriment and deprivation of constitutional and civil rights, with permanent and continuing injury.

WHEREFORE, Plaintiff demands judgment against each, any, all, or any combination of Defendants, in the sum of (a) compensatory damages in the sum of \$1,000,000.00; (b) judgment in the sum of \$500,000.00 for punitive or exemplary damages; (c) for attorney fees, costs and disbursements and/or all other relief to which Plaintiff may be entitled.


June Underwood
Plaintiff
as represented by:


MARLENE PENNY MANES


JAMES R. RIMEDIO

Attorneys for Plaintiff
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REQUEST FOR SERVICE:

Serve each Defendant as pursuant to Court of Claims Rules.

IN THE COURT OF APPEALS
FRANKLIN COUNTY, OHIO

RECEIVED DEC 27 1932

JUNE UNDERWOOD

Plaintiff/Appellant

Case No. 82AP849

vs.

STATE OF OHIO

Defendant/Appellee

APPELLANT'S BRIEF AND ASSIGNMENTS OF ERROR

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IN THE SUPREME COURT OF OHIO

JUNE UNDERWOOD

: Case No. 83-1321

Appellant

:

vs.

:

STATE OF OHIO, et al.

:

Appellees

:

MEMORANDUM IN SUPPORT OF JURISDICTION

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